

119251

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

FILE: B-208049

DATE: August 19, 1982

MATTER OF: Federal Communications Commission--Request
for Advance Decision

DIGEST:

1. A claim by a real estate broker for damages arising from the Federal Communications Commission's failure to enter into a lease for office space located by the broker may be settled by the contracting officer under the Contract Disputes Act.
2. Payment of proposed contract settlement must wait until the certifying officer has received a settlement agreement signed by both parties to the contract which sets forth a finding of legal liability by the Government and a statement of the amount owed.

Mr. Wayne B. Leshe, Chief Certifying Office of the Federal Communications Commission (FCC), pursuant to 31 U.S.C. § 82d (1976), requests an advance decision regarding the propriety of the proposed settlement of a claim for \$1,543,006, filed by Julien C. Studley, Inc., under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-603 (Supp. III, 1979). Specifically, Mr. Leshe asks whether the FCC contracting officer is authorized to settle the claim under the Contract Disputes Act. We find that the FCC contracting officer is authorized to settle this claim.

The relevant facts and circumstances of record follow. Beginning in the late 1970's, the FCC sought a location for its headquarters offices to consolidate scattered rental office space at various locations in the Washington metropolitan area. In order to facilitate this effort, FCC officials obtained the assistance of Studley, a commercial real estate broker.

On July 29, 1980, an arrangement was entered into between the FCC and Studley in the form of a letter signed by a representative of Studley and by an FCC official (an Assistant to the then FCC Chairman). The body of the letter provided (in its entirety) that:

"We hereby accept appointment as your exclusive real estate broker for a period of one year from the date hereof to locate and negotiate for space for you in the Washington Metropolitan area.

"As your exclusive broker, we shall select, analyze, evaluate and negotiate for all space under consideration, but make no commitment on your behalf.

"You shall refer all space offerings and solicitations you have on file or shall receive from owners, brokers, or others to us for action and evaluation.

"It is understood and agreed that there shall be no charge to you for our services and that we shall look to the building owners or their agents for brokerage commissions.

"Please indicate your approval and acceptance of this letter agreement by signing the enclosed copies and returning them to us for file."

The FCC referred all space offerings and solicitations for office space to Studley. In the fall and winter of 1980-81, Studley negotiated a lease for office space in two towers under construction in Rosslyn, Virginia. On February 24, 1981, the FCC submitted to the House Subcommittee on Public Buildings and Grounds a prospectus for leasing the Rosslyn buildings. The proposed leases were for terms up to 20 years totaling 375,000 square feet at an annual cost of approximately \$6,387,000.

During a March 18, 1981, hearing on the proposed lease, the Subcommittee raised several objections to the FCC's proposed move out of the District of Columbia to

Roslyn. Thereafter, the FCC Commissioners voted to defer action on the proposed relocation to Roslyn or any alternative location until a new Chairman was confirmed by the Senate.

On March 27, 1981, a letter was sent to Studley stating in part that:

"On March 19, 1981, the Federal Communications Commission deferred any further action to relocate and consolidate its business offices pending the arrival of the next Chairman. This, of course, means we have no further need to continue the Agency's arrangement with your firm as its exclusive real estate broker as indicated in our agreement dated July 29, 1980.

* * * * *

"Please accept our thanks for the excellent services your firm executed during our relationship."

On June 17, 1981, Studley protested the cancellation of the exclusive brokerage arrangement. Studley requested reinstatement as exclusive broker in securing other office space for the FCC. After a series of meetings, the FCC concluded that reinstatement was not possible. Subsequently, on December 7, 1981, Studley submitted an analysis of damages suffered as a result of the FCC's termination of the brokerage agreement.

On May 7, 1982, Studley filed a certified claim with the FCC pursuant to the Contract Disputes Act of 1978, in the amount of \$1,543,006. Negotiations to settle the claim have resulted in a proposed settlement whereby the FCC would pay Studley \$198,827.60 in full and final settlement of the claim.

However, the FCC certifying officer notes that a recent decision, Contract Disputes Act of 1978, 59 Comp. Gen. 232 (1980), 80-1 CPD 79, our Office distinguished claims filed and considered under the Contract Disputes Act from claims which were based on informal commitments where no contract is involved. In light of the referenced decision, our response to the following questions is requested.


- "1. May the Studley claim be considered and settled under the terms of the Contract Disputes Act of 1978, such that I may certify for disbursement the amount approved by the Commission's Contracting Officer? or,
- "2. If the Studley Claim may not be considered and settled as noted in 1 above will the General Accounting Office authorize this Commission to proceed with settlement of the claim?"

It is clear that this claim may be settled under the Contract Disputes Act. The Act provides that all claims by a contractor against the Government relating to a contract shall be submitted to the contracting officer for a decision. 41 U.S.C. § 605(a). It provides that when a claim is submitted the contracting officer shall issue a decision on the claim stating the reasons for the decision reached. 41 U.S.C. *id.* The Act further provides that the contracting officer's decision shall be final and not reviewable unless appealed by the contractor. 41 U.S.C. § 605(b). As stated in 41 U.S.C. § 602(a), these provisions apply to all claims relating to any express or implied contract entered into by an agency for the procurement of property and services. Since the Act authorizes the FCC contracting officer to issue a decision on this claim, the contracting officer clearly is authorized to settle the claim. See, generally, Paragon Energy Corp. v. United States, 645 F.2d 966 (Ct. Cl. 1981).

Our decision in 59 Comp. Gen. 222, supra, does not hold otherwise. There we held that vouchers for payment based on informal commitments should continue to be sent to our Office for settlement notwithstanding the passage of the Contract Disputes Act. We stated that informal commitments by their very nature were not subject to the usual safeguards, as are express contracts, and therefore they should be referred to us for settlement to ensure compliance with appropriation and procurement requirements. Our holding, however, is limited to those situations where no dispute exists and the agency agrees that the claim should be paid. Where, as here, a claim has been submitted under the Act, the claim must be resolved as provided in the Act.

Our conclusion that the FCC contracting officer has authority to settle this claim under the Contract Disputes Act does not mean that this claim is now ripe for payment. Before payment may be made, there must be a written decision by the contracting officer setting forth a clear finding of legal liability. While our examination of the record fails to show a basis for a finding of clear legal liability on the part of the Government, as pointed out above, any such decision by the contracting officer would be final. In addition, before payment may be made, under 31 U.S.C. § 82c, it is the certifying officer's responsibility to ensure that the proposed payment is lawful under the appropriation or fund involved. In the instant case, the certifying officer's question is still hypothetical. In requesting our advance decision, he did not include a voucher or any similar document signed by an authorized official requesting certification of a specified sum, as required by 31 U.S.C. § 82d. (See GAO Policy and Procedures Manual, title 3, section 47, for a definition of a voucher and what it must include. See also B-179916, March 11, 1974, which discusses the necessary supporting documentation under 31 U.S.C. § 82c.) Payment must therefore wait until he has received, among other required documents, a written settlement agreement, signed by the contracting officer and by the claimant, setting forth a clear finding of legal liability on the part of the Government and a statement of the amount owed.

Accordingly, a voucher in the amount due may be certified if administratively authorized and supported by the contracting officer's determination of legal liability.

for 
Comptroller General
of the United States